IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 444 of 2001

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INSURANCE COMPANY LTD.

Versus

HEIRS & L.R. OF DECD. HIRAJI RUPAJI

Appearance:

MR PV NANAVATI for Appellant

MR CJ VIN for Respondents No. 1/1

SERVED BY RPAD - (N) for Respondents No. 1/3-1/5

MR RC PATHAK for Respondents No. 1/6-1/7

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE SHARAD D.DAVE

Date of decision: 26/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. This is an appeal under section 30 of the Workmen's Compensation Act, 1923, at the instance of the Insurance Company, challenging the judgement and award passed by the Commissioner for Workmen's Compensation, Ahmedabad, in Workmen's Compensation Case No.200/95.

2. This appeal raises a short question of law as to whether the impugned award could have been passed on the basis of the amendment to the Act in respect of section 4 thereof, by Act No.30/45, with effect from 15th September 1995, and consequential points.

3. There is no controversy that the claim for compensation was made on account of the death of the employee on 26th October 1994 i.e. before the relevant portion of section 4 was amended by the aforesaid Act. Obviously, therefore, the compensation which can be awarded to the claimant under section 4-A of the Act would be an amount equal to 40% of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of Rs.50000/- whichever is more. There is no controversy on this issue.

4. It is obvious, therefore, that the impugned award in this context is erroneous and requires to be modified accordingly.

5. Another contention is raised in respect of section 4-A of the Act. In this context it is urged that section 4-A, subsection (3), clause (a) directs interest at the rate of 12%, only after the aforesaid amendment, and before the said date it was 6%. Obviously the impugned award is also required to be modified in this context.

6. It was further urged by the appellant Insurance Company that it would not be liable for penalty or for the costs inasmuch as it is not legally liable either to reimburse or to make any payment on behalf of the employer in respect of the penalty. This position in law cannot be challenged. Similarly, the costs which the Commissioner for Workmen's Compensation has awarded to the claimant should be borne entirely by the employer and not by the Insurance Company, particularly since the proceedings have not been thrust upon the claimants on account of any delay or default on the part of the appellant Insurance Company. Even this contention could not be resisted.

7. In the premises aforesaid and on the admitted facts of the case, this appeal is partly allowed to the aforesaid extent with no order as to costs. Consequently the impugned judgement and award shall stand modified accordingly. It is clarified that the order as to penalty and costs in favour of the original claimants is set aside only as against the appellant Insurance Company and not against the employer.

8. Decree accordingly.

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